



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2003

Mr. Hugh Coleman
Assistant District Attorney
County of Denton
127 North Woodrow Lane
Denton, Texas 76205

OR2003-5926

Dear Mr. Coleman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186422.

The Denton County Sheriff's Office (the "sheriff") received a request for a variety of information pertaining to the release or escape of a specified person. You claim that most of the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the submitted information includes search warrant affidavits. An affidavit to support a search warrant is made public by statute if the search warrant has been executed. *See* Code Crim. Proc art. 18.01(b). Because the search warrants that are included within the submitted information have been executed, the sheriff must release the marked search warrant affidavits to the requestor. *See generally* Open Records Decision No. 525 (1989) (stating that Public Information Act's exceptions do not, as general rule, apply to information made public by other statutes).

Next, we note that portions of the remaining submitted information are subject to section 552.022 of the Government Code. Section 552.022 makes certain information public, unless it is expressly confidential under other law. *See* Gov't Code § 552.022(a). One category of public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" *Id.* § 552.022(a)(1). Two other categories of public information under section 552.022 are "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body" and "information that is also contained in a public court record[.]" *Id.* §§ 552.022(a)(3), (17). Several documents contained within the remaining submitted information are encompassed by

section 552.022(a)(1) and must be released to the requestor, unless they are confidential under other law or are excepted from disclosure under section 552.108 of the Government Code. In addition, several documents contained within the remaining submitted information are encompassed by subsections 552.022(a)(3) and (a)(17) and must be released to the requestor, unless they are confidential under other law. Although the sheriff claims that all of the section 552.022 information is excepted from disclosure pursuant to section 552.103 of the Government Code and that the documents that are subject to subsections 552.022(a)(3) and (a)(17) are excepted from disclosure pursuant to section 552.108 of the Government Code, we note that these exceptions to disclosure are discretionary exceptions to disclosure under the Public Information Act and, as such, do not constitute "other law" that makes information confidential.¹ Accordingly, we conclude that the sheriff may not withhold any portion of the section 552.022 information under section 552.103 or any portion of the documents that are subject to subsections 552.022(a)(3) and (a)(17) under section 552.108. However, since the sheriff claims that the documents that are subject to section 552.022(a)(1) are excepted from disclosure pursuant to section 552.108 of the Government Code, we will address the sheriff's claim with respect to that information.

In addition, we note that portions of the documents that are subject to section 552.022(a)(17) are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code* § 552.130. Accordingly, we conclude that the sheriff must withhold the Texas driver's license numbers that we have marked within the documents that are subject to section 552.022(a)(17) pursuant to section 552.130 of the Government Code. The sheriff must release to the requestor the remaining portions of the documents that are subject to section 552.022(a)(17) of the Government Code. We have marked this information for your review.

Further, we note that the documents that are subject to section 552.022(a)(3) contain bank account numbers that are excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 provides:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

¹ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. Accordingly, the sheriff must withhold the bank account numbers that we have marked within the documents that are subject to section 552.022(a)(3) pursuant to section 552.136 of the Government Code. The sheriff must release to the requestor the remaining portions of the documents that are subject to section 552.022(a)(3) of the Government Code. We have marked this information for your review.

We now address your section 552.108 claim with regard to the remainder of the submitted information, to include the documents that are subject to section 552.022(a)(1) of the Government Code. Section 552.108(a)(1) provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to three ongoing criminal prosecutions. Based on our review of your representations and the remainder of the submitted information, we find that the release of most of this information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a). Thus, we agree that section 552.108(a)(1) is applicable to the remainder of the submitted information.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public). Accordingly, with the exception of basic information that must be released to the requestor from throughout the remainder of the submitted information, we

conclude that the sheriff may withhold the remainder of the submitted information pursuant to section 552.108(a)(1) of the Government Code. We note, however, that the sheriff maintains the discretion to release all or part of that particular information that is not otherwise confidential by law.²

In summary, the sheriff must release the marked search warrant affidavits pursuant to article 18.01(b) of the Code of Criminal Procedure. The sheriff must withhold the information that we have marked within some documents that are subject to subsections 552.022(a)(3) and (a)(17) of the Government Code pursuant to sections 552.130 and 552.136 of the Government Code. The sheriff must release to the requestor the remaining portions of the documents that are subject to subsections 552.022(a)(3) and (a)(17). With the exception of basic information that must be released to the requestor from throughout the remainder of the submitted information, the sheriff may withhold the remainder of the submitted information pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

² Because we base our ruling on the above-noted exceptions to disclosure, we need not address the applicability of your remaining claimed exceptions to disclosure. We note in this regard that "basic information" may not generally be withheld under section 552.103 of the Government Code. *See Open Records Decision Nos. 597 (1991), 362 (1983).*

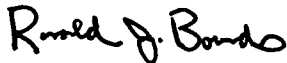
that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 186422

Enc. Marked documents

c: S. Rafe Foreman
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(w/o enclosures)